IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6929 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATBHAI GIRDHARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AR SHAIKH for the Petitioner.

Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 22.5.2002. By the said orer, the petitioner is detained as a `bootlegger'. In the detention order, there is a reference to three

criminal cases. All these cases are filed under Sections 66-B, 65-AE, 116B read with Section 81 of the Bombay Prohibition Act. It is alleged that the petitioner is dealing in illicit liquor by selling the same illegally. Statements of witnesses were also recorded.

At the time of hearing of this petition, it is submitted by the learned Advocate for the petitioner that a co-detenu is released by this Court. Therafter, the petitioner made a representation to the Home Minister on 3.7.2002. Copy of the representation is also annexed in the compilation at page 102 and registered A.D. slip is also annexed, showing that the said registered A.D. document was sent to the Home Ministry. It is submitted that the said representation is not dealt with at all and no reply is given to the petitioner.

Learned AGP, however, submitted that so far as the detaining authority is concerned, it has not received any such representation. He, however, conceded that the detaining authority is not aware whether the Home Ministry has received any representation or not. Apart from the aforesaid fact, the State of Gujarat has not filed any reply. The representation in question in any case is required to be dealt with and is required to be decided on its own merits. Since the State has not filed any reply controverting the averments made in the petition, there is no alternative but to release the petitioner, as, the representation of the petitioner is not decided by the State Government and the State has not even filed a reply, controverting the aforesaid fact. The petition is accordingly allowed on this short point alone.

Under the circumstances, the petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

***

(apj)